

**MIXED-FINANCE AMENDMENT
TO CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT**

Section 1. This Mixed-Finance ACC Amendment covers the project identified below (herein referred to as "the Project" or "the Mixed-Finance Project"):

(A) Development Grant Project Number: _____; or

(B) Modernization Grant Project Number (for modernization funds approved for use for development purposes):

_____; or

(C) HOPE VI Grant Agreement No. _____.

Section 2. This Mixed-Finance ACC Amendment is an amendment to Consolidated Annual Contributions Contract (ACC) (Form HUD-53012A and Form HUD-53012B) Number: _____, dated _____.

Section 3. The ACC is amended to provide grant assistance for the Project identified in Section 1 and/or to add the Project Units (as defined in Section 4(I) of this Mixed-Finance ACC Amendment) to the ACC. This Mixed-Finance Amendment is part of the ACC and incorporates Exhibits A-G, which are attached hereto.

Section 4. The following provisions are applicable to the Project:

(A) Date of Project grant reservation:

_____.

(B) Number of Project Units to be developed: ____.

(C) Housing Type: _____.

(D)(1) For projects to be developed using development grant funds, or modernization funds approved for conversion to development purposes, the Maximum Total Development Cost (Development Grant Authority) of the Project is:_____.

(2) For projects to be developed using HOPE VI grant funds, the approved Total Development Cost of the Project is: ____.

(E) The Project Units will be (check one): [designated units _____]; [undesignated units ____] in the mixed-finance development.

(F) The Project Units are (check one): [eligible ____]; [ineligible ____] to receive operating subsidy under section 9 of the United States Housing Act of 1937 ("the Act"). If some or all of the units are eligible to receive operating assistance, specify the number of eligible units (including the number of bedrooms per unit) that will be eligible to receive such assistance: units; containing bedrooms.

(G) The Project Units shall be ineligible to receive modernization assistance unless the housing authority executes a project-specific ACC modernization amendment in connection with the Projects Units.

(H) The definitions set forth in 24 CFR part 941, subpart F, are applicable to this Mixed-Finance ACC Amendment.

(I) As used in this Mixed-Finance ACC Amendment, the term "Development" shall refer to the entire housing facility, containing ____ dwelling units, being developed using a mixed-finance strategy, and the term "Project," as used herein and as used in the ACC with respect to Grant Project Number _____, shall refer only to the ____ units of the Development (containing ____ bedrooms) which shall be developed and continuously set aside, operated, and maintained as public housing units (the "Project Units"). Nothing contained herein shall be construed as requiring that any dwelling units included in the Development shall at any time be maintained and operated in accordance with the ACC, or to constitute part of a "project" as defined in the ACC, other than the units contained therein constituting from time to time the Project Units.

Section 5 - HA certifications and assurances.

(A) By executing this Mixed-Finance ACC Amendment, the public housing agency (the "HA") certifies to HUD and, as applicable, agrees that:

(1) it has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under 24 CFR part 941, the HUD-approved proposal, and this Mixed-Finance ACC Amendment. The HA also warrants that it has the legal authority under State and local law to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(2)(i) it will ensure that the Development is developed in accordance with the mixed-finance proposal submitted by the HA (and approved by HUD; the "Proposal") and this Mixed-Finance ACC Amendment (including all exhibits), and that the Project Units are developed in accordance with the ACC (except that any requirement set forth in the ACC is superseded by a modified requirement set forth in this Mixed-Finance ACC Amendment), and all statutes, executive orders and regulations applicable to the development of mixed-finance public housing units, as such requirements now exist or as they may be enacted, promulgated, or amended from time to time.

(ii) if the Project Units are to be developed using HOPE VI funds, the HA agrees that, in addition to the requirements set forth in subparagraph (i), it also will comply with any applicable requirements set forth in the HOPE VI grant agreement, the approved Revitalization Plan, and any statutes, executive orders and regulations applicable to the HOPE VI program, as such requirements now exist or as they may be enacted, promulgated, or amended from time to time.

(3) it will ensure that the requirements for admission to, continued occupancy of, management, and modernization of the Project Units are in accordance with all requirements applicable to public housing, as set forth in the ACC (except that any requirement set forth in the ACC shall be superseded by a modified requirement set forth in this Mixed-Finance ACC Amendment or the HOPE VI grant agreement, if applicable), and all statutes, executive orders and regulations applicable to public housing units (except any such requirements as are expressly excluded from applicability to public housing units contained in mixed-finance developments), as such requirements now exist or as they may be enacted, promulgated, or amended from time to time; provided, however, that if HUD shall, by regulation alone, modify the eligibility standards for occupancy of public housing units, the criteria or methods for calculation of tenant income or rental payments, or any other factor bearing upon the charges for or occupancy or use of public housing units generally, which modification would be adverse to the Development, the HA (on behalf of the owner entity) may request a waiver from such regulation, which will not be unreasonably withheld so long as the owner entity has demonstrated good cause (as required by regulation) for such waiver.

(4) there is no action, proceeding, or investigation now pending, nor any basis therefor, known or believed to exist by the HA, which: (i) questions the validity of this Mixed-Finance ACC Amendment, or any action taken, or to be taken, under it, or; (ii) is likely to result in any materially adverse change in the authorities, properties, liabilities, or condition (financial or otherwise) of the HA or the Proposal, or of any participating party, that would materially or substantially impair the HA's or such participating party's ability to perform any of the obligations imposed upon it under the Proposal and this Mixed-Finance ACC Amendment;

(5) it has obtained all Federal, State, and local government approvals and reviews required by law, or reasonably required by HUD, to be obtained by the HA for commencement of the activities set forth in the Proposal, and all participating parties have obtained all such approvals and reviews required to be obtained by the participating parties for commencement of such activities.

(6) it will immediately notify HUD of (i) any material change in any representations, statements, certifications or other matters contained in the HA's Proposal, this Mixed-Finance ACC Amendment, and/or the HOPE VI Revitalization Plan (if applicable), and (ii) any default of which it has notice under any agreement submitted to HUD as part of the evidentiary materials hereunder.

(7) it will use its best efforts to assure the performance of all HA, owner entity, and participating party(ies) obligations under this Mixed-Finance ACC Amendment in accordance with the timeframes established in the development schedule attached hereto as Exhibit D.

(8)(i) The HA hereby acknowledges that HUD has approved the Proposal in reliance upon the HA's representations that the HA, the partner(s), the owner entity(ies), and other participating parties will, and the HA hereby further agrees that it will, or will cause the participating parties to:

(a) carry out the activities ascribed to them in accordance with the Proposal and approved implementing documents (as summarized in Exhibit B hereto);

(b) complete those activities in accordance with the schedule set forth in Exhibit D, including the development of the Project Units;

(c) have (or will have when necessary to implement their activities in accordance with the Proposal), the financial capacity to assure carrying out the activities to their completion;

(d) invest or cause to be invested in the activities described in the Proposal a specific amount of funds in addition to the public housing funds (or the HOPE VI funds, if applicable), in accordance with Exhibit F. HUD has also relied upon the HA's, the owner entity's, and the partner(s)'s representations that they and other participating parties, prior to the use of the public housing funds (or HOPE VI funds, if applicable) for the Proposal, will enter into legally binding agreements, as approved by HUD as part of the evidentiary material identified in Exhibit E to this Mixed-Finance ACC Amendment, evidencing the commitments of all parties necessary for completion of the Proposal, in compliance with the requirements of this Mixed-Finance ACC Amendment; and

(ii) the representations, statements, certifications and other matters contained in the Proposal were, to the best of the HA's information and belief, true and complete in all material respects as of the dates of submission of the Proposal to HUD (including the dates of any separate submissions for a specific phase), and upon the execution of this Mixed-Finance ACC Amendment and will continue to be true and complete in all material respects as of the date of any amendment to this Mixed-Finance ACC Amendment, except as modified by such amendment (and any corollary modification to the Proposal that the HA deems necessary);

(9) this Mixed-Finance ACC Amendment has been executed and delivered by the HA in such a manner and form as to comply with all applicable laws so as to make this Mixed-Finance ACC Amendment the valid and legally binding act and agreement of the HA; and

(10) it will use, or ensure the use of, program income during the grant period, in accordance with 24 CFR § 85.25, only for eligible program costs or other low-income housing purposes. The HA agrees that after the end of the award period, any gross income received by the HA or a subgrantee that was directly generated by a grant-supported activity (or earned only as the result of funding provided under Section 3 of this Mixed-Finance ACC Amendment), including, without limitation, principal and interest on loans made with grant funds, will be utilized solely for eligible program costs or other low-income housing purposes. This covenant will survive any termination of the grant and, at HUD's direction, may be incorporated into any documentation related to the closeout of the grant.

(B) The HA warrants that it will include, or cause to be included:

(1) in all its agreements or contracts with the partner, the owner entity, and/or other participating parties receiving public housing or HOPE VI grant funds an acknowledgement that a transfer of public housing or HOPE VI grant funds by the HA to the partner, the owner entity, or other participating party will not be (and shall not be deemed to be) an assignment of public housing or HOPE VI grant funds, and the partner, owner entity, or other participating party will not succeed to any rights or benefits of the HA under the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable, or attain any privileges, authorities, interests, or rights in or under the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable.

(2) in all its agreements or contracts with the partner, the owner entity, or other participating parties, and in all contracts with any party involving the use of public housing or HOPE VI grant funds, a provision that nothing contained in the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable, nor in any agreement or contract between the parties, nor any act of HUD, the HA, or any of the parties, will be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD; provided, however, that the mortgagee under the first mortgage or deed to secure debt and note secured thereby, as said documents are more specifically identified in Exhibit E hereto (respectively, referred to herein as the "First Mortgage" and "Note") shall be entitled to rely upon Section 11(C) and (D) of this Mixed-Finance ACC Amendment.

Section 6 - Evidentiary Materials.

(A) **Content.** The HA shall submit to HUD for review and approval the evidentiary materials specified in Exhibit E to this Mixed-Finance ACC Amendment. Such evidentiary materials must be submitted in the form of legally binding and enforceable commitments of the parties to the Proposal to undertake and complete specified activities connected with the Proposal, as set forth below:

(1) Evidence of Contracts

Evidence of contractual commitments submitted to HUD must include all documents evidencing the contractual commitments, with an opinion of counsel attached (see paragraph (B)(2) of this section regarding the proper form for opinions of counsel).

(2) Evidence of Loans, Closings, Bond Sales.

(i) Evidence of a loan must be submitted in the form of copies of fully executed notes, deeds, bonds, indentures, loan agreements, and other documents, which must contain sufficient evidence (satisfactory to HUD) to enable HUD to determine: that the loan has been closed and the funds are irrevocably committed and immediately available to the borrower; the principal amount of the loan; its purposes (interim or permanent); and the authorized use of loan funds; the identity of the security for the loan; the term of the loan; the interest rate (and/or any other form of participation) under the loan; the repayment provisions; the default provisions; the identity of all parties to the loan; with an opinion of the owner entity's (and/or any other borrower's) counsel addressed to HUD in accordance with the requirements of paragraph (B)(2) of this section.

(ii) If bonds or limited partnership interests are sold to finance the Proposal, the evidence must include a copy of the offering statement or syndication prospectus for the sale of the bonds or limited partnership interests and a statement from the trustee or depository of the proceeds certifying that the bonds or limited partnership interests have been sold and the amount of the proceeds that are available immediately for the implementation of the Proposal, and must have an opinion of the owner entity's (and/or any other borrower's) counsel addressed to HUD in accordance with paragraph (B)(2) of this section. In the event that any portion of the proceeds of the sale of the bonds or limited partnership interests are to be made available over an extended period, or for any other reason are not immediately available in accordance with the Proposal, evidence of "bridge financing" loan(s) in such amount (secured by pledges from the limited partners or in another manner which does not encumber the Project), or other evidence satisfactory to HUD, must be submitted as part of the evidentiary materials, in accordance with paragraph (1) of this section. Notwithstanding the foregoing, the requirement for bridge loan financing will be waived to the extent that such proceeds are necessary only to cover the payment of developer fees (provided that the receipt of such proceeds are timed to coincide with deferred payments to the developer for its fees).

(3) Evidence of Other Financing and Funding Sources (including other Federal, State and Local Commitments).

(i) Whenever evidence is required in the form of a statement and opinion of counsel (or other party designated by HUD) that a participating party has irrevocably committed a specific amount of finances to carry out the commitment of that participating party under the Proposal, such evidence must be in the form of an opinion of counsel or such other party designated by HUD, made in accordance with paragraph (B)(2) of this section.

(ii) The opinion of counsel (or other party designated by HUD) must certify that: such party has examined the availability of the participating party's financing, or other funding source; state the amount and the source of such financing or other funding committed by the participating party to the Proposal; and state that such financing or other funding has been irrevocably committed by the participating party for use in the Proposal and such commitment is in the amount required under the terms of the Proposal.

(4) Evidence of Title.

Evidence of fee simple or leasehold title to real property must be in the form of an original ALTA (or other form acceptable to HUD) policy of owner's or mortgagee's title insurance, which must identify the real property and the ownership interests of the HA, owner entity, and other participating parties (as appropriate) as the owners or lessees of record of such property. The title policy must also reflect that any instruments securing any private or public financing, including any loan of public housing funds (or HOPE VI funds, if applicable) have been recorded against the title, and that deed restrictions or covenants running with the land relating to the restrictions and requirements applicable to public housing units under this Mixed-Finance ACC Amendment have been recorded in full to assure that the restrictions and requirements will remain in effect for the period required by law and under this Mixed-Finance ACC Amendment and will survive all other interests.

(B) **Form of evidentiaries.**

(1) **Submissions.** All documentary evidence submitted to HUD must be in the form of either duplicate original(s) of the fully executed document(s), or photographic copies of the fully executed original of the document(s), unless otherwise specified, with a certification attached that the document is a true and complete copy of the original.

(2) **Opinions of counsel.**

(i) Counsel must opine to the following for each document submitted as evidentiary material under Exhibit E to this Mixed-Finance ACC Amendment:

(a) An examination of the authority of all parties to the documents and all persons executing the documents on behalf of the parties has been made and that the parties and said persons were authorized to enter into and execute the documents; and

(b) Each document constitutes a valid and legally enforceable agreement or contract under the laws of the HA's State and the commitments and/or agreements evidenced thereby can be carried out in accordance with their terms under State and local law, and conform to the provisions of the Proposal approved by HUD and the requirements of this Mixed-Finance ACC Amendment, and that there is nothing in such document that conflicts with, or is inconsistent with, the requirements of this Mixed-Finance ACC Amendment.

(ii) Each opinion of counsel must be in writing and include the separate opinions of the HA's counsel and the owner entity's counsel, unless otherwise specified.

(iii) Counsel may rely upon the certification of other persons, or the written statements or opinions of other counsel, provided that a copy of each such certification, statement, or opinion must be attached to the opinion of that counsel.

(iv) If counsel predicates an opinion upon "information and belief," then in all such cases the counsel's opinion must contain, or have attached thereto, a statement or description of all of the information upon which the belief of counsel is predicated.

(C) **Amendment of approved evidentiaries.** After HUD has approved an evidentiary submitted in accordance with this Mixed Finance ACC Amendment, the evidentiary may not be amended in any material respect without the prior written approval of HUD.

(D) **Implementation in phases.** If Exhibit D contemplates implementation of the Proposal in phases, all of the evidentiary material for each phase must be delivered to HUD, in accordance with the provisions of this Mixed-Finance ACC Amendment, no later than the date specified in Exhibit D.

Section 7 - Draw down of Funds.

(A) The HA shall ensure that grant funds are expended only in accordance with the requirements set forth in this Mixed-Finance ACC Amendment and the approved budget set forth in Exhibit F to this Mixed-Finance ACC Amendment.

(B) In the event that funds in addition to those set forth in the budget(s) at Exhibit F are received from any source in connection with the Development, such excess funds may only be used, as approved by HUD in writing, for: (1) cost overruns; (2) additional betterments; or (3) other purposes for the benefit of the residents and/or the Development.

(C) Notwithstanding any contrary requirement set forth in 24 CFR §85.21, the HA shall request all draw downs of grant funds under the Line of Credit Control System - Voice Response System (LOCCS-VRS), unless and until another payment system is designated by HUD. The HA shall comply with all rules, guidelines and notices established for the public housing development program under the LOCCS-VRS system, or any substitute system, in connection with the draw down of public housing development funds (or HOPE VI funds, if applicable). If HUD designates an alternative payment system, it shall be based on 24 CFR §85.21.

(D) HUD may withhold payments under this Mixed-Finance ACC Amendment in accordance with 24 CFR §85.21(g), except that indebtedness of the HA to the United States which is not related to a Project under this Mixed-Finance ACC Amendment shall not be the basis for withholding payments under this Mixed-Finance ACC Amendment pursuant to § 85.21(g)(1)(ii).

(E) After HUD provides the HA with written notification that the evidentiaries have been reviewed and approved, the HA may request a draw down of grant funds pursuant to the approved budget in Exhibit F.

(F) The HA may utilize grant funds, in accordance with the budget under Exhibit F, for publication costs of reports or other media relating to Project accomplishments or results, which are allowable costs pursuant to OMB Circular A-87, Schedule B, paragraph 23).

(G) No grant funds may be drawn down under this Mixed-Finance ACC Amendment during any period in which the HA has failed to file with HUD any overdue financial report(s).

Section 8 - Covenant Against Disposition and Encumbrances.

With respect only to the Project under this Mixed-Finance ACC Amendment, Section 7 of the ACC is modified in its entirety to read as follows:

(A) Neither the Project Units nor any part thereof shall be demolished or disposed of, other than in accordance with the terms of this ACC and applicable statutory or regulatory requirements (subject to any waivers granted pursuant thereto), so long as this Mixed-Finance ACC Amendment remains in force with respect to the Project. With the exception of (i) the First Mortgage and any mortgage(s) held by the Authority which have been approved by HUD, (ii) dwelling leases with eligible families for the Project Units (iii) subordinate liens approved by the HA in connection with purchase or financing of replacements or repairs necessary for the normal use and operation of the Development, and (iv) normal uses associated with the operation of the Project, neither the Project nor any portion thereof shall be encumbered in any way, nor the assets of the Project pledged as collateral for a loan, without the prior approval of HUD.

(B) If the Project Units are owned by an entity other than the HA, no transfer, conveyance, or assignment shall be made, without the approval of HUD, of (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") in the owner entity, or (ii) a Controlling Interest in any entity which has a Controlling Interest in the owner entity, or (iii) prior to payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the owner entity, or in any partner or member thereof. HUD agrees that it will not unreasonably withhold, delay, or condition a request by the owner entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the owner entity or any of the partners, members or stockholders of the owner entity.

Section 9 - Declaration of Restrictive Covenant.

With respect only to the Project under this Mixed-Finance ACC Amendment, Section 8 of the ACC is modified in its entirety to read as follows:

If fee title to the Development is owned by an entity other than the HA, the HA shall require the owner entity to execute and file for record, prior to the recordation of any other encumbrance agreed to by the owner entity, a Declaration of Restrictive Covenant, in form approved by HUD, confirming and evidencing that the owner entity, during the term of the regulatory and operating agreement covering the Project Units and during such further period when such approval may be required by law as then in effect, shall maintain and operate the Project Units in compliance with the requirements of the ACC as modified by this Mixed-Finance ACC Amendment, the Act, and all regulations thereunder, including, without limitation, the restrictions against demolition or disposition of the Project Units, and of the interests in the owner entity, set forth in section 7 of the ACC, as modified by this Mixed-Finance ACC Amendment. Such Declaration of Restrictive Covenants shall provide further that it may not be modified, amended or released without the written approval of HUD.

Section 10 - Restoration.

Section 13(B) of the ACC is modified in its entirety to read as follows:

The HA, to the extent that insurance proceeds or condemnation award proceeds ("Proceeds") permit, shall promptly cause the restoration, reconstruction, and/or repair ("Restoration") of any damaged or destroyed property of the Development. If the Project Units are owned by an entity other than the HA, the obligation for Restoration, to the extent Proceeds and other funds (if any are made available by an owner entity or the HA) permit, is a requirement with which the owner entity must comply to the extent Restoration is feasible. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt).

If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement between the HA and the owner entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Development shall be consistent, shall apply:

(1) if the Proceeds are less than or equal to the sum of the existing outstanding mortgage debt secured by the Development, excluding any such debt held by the HA to secure a loan of public housing funds or HOPE VI grant funds for the Project ("Existing Mortgages"), and such Proceeds are applied to reduction of Existing Mortgages, the **number** of Project Units in the Development shall remain the number required immediately prior to the occurrence of the casualty or condemnation;

(2) if the Proceeds are less than or equal to the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof **and** the HA, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project Units to all dwelling units in the Development, and then by payment to the HA of the balance of the Proceeds; then the **percentage** of units in the Development (and the percentage of bedrooms contained therein) which shall be Project Units shall remain the same as required immediately prior to the casualty or condemnation;

(3) if the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority, (i) to reduce any outstanding indebtedness to the HA for a loan of public housing funds or HOPE VI grant funds, (ii) to reimburse the HA for any public housing funds or HOPE VI grant funds disbursed to the owner entity for development of the Development other than by loan, (iii) to the HA an amount equal to the total "cost of construction" attributable to the Project Units, less the sum of (i) and (ii) above, and (iv) to the owner entity. (For the purposes of this paragraph, the term "cost of construction" shall mean the total cost of developing the Development, less land acquisition costs, if any, and non-capitalized "soft" costs.) Following application of Proceeds in accordance with the foregoing, the **percentage** of dwelling units in the Development which shall be Project Units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; **provided**, however, that to the extent that the payment to the HA pursuant to clauses (i), (ii), and (iii) shall be less than the "cost of construction" attributable to the Project Units, the number of remaining units in the Development which shall be Project Units shall be increased by a number of units (rounded down) equal to (A) the amount by which such payments to the HA shall be less than the cost of construction, divided by (B) the quotient of (x) cost of construction, divided by (y) the number of Project Units immediately prior to the occurrence of the casualty or condemnation.

Section 11 - Default.

(A) Each of the following shall constitute an event of substantial default under the ACC:

(1) The draw down of public housing funds (or HOPE VI grant funds, if applicable) under the Proposal in amounts greater than authorized, or in amounts greater than allowed by the pro rata drawdown requirements in Exhibit G of this Mixed-Finance ACC Amendment;

(2) Breach of any approved performance schedule; or

(3) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i) the HA, as set forth in this Mixed-Finance ACC Amendment;

(ii) the HA, as set forth in any agreement submitted to HUD as part of the evidentiary materials and entered into between the HA and the owner entity, partner, or other participating party relating to the Proposal which, in the opinion of HUD, adversely affects the performance obligations of the HA, the owner entity, or other participating parties, as set forth in this Mixed-Finance ACC Amendment; and

(iii) the owner entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the owner entity, partner, or other participating party as set forth in this Mixed-Finance ACC Amendment.

(B) HUD shall permit an owner entity, partner, or lender to participate, and may, in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to Section 17 (C) of the ACC with respect to the Project.

(C) During the term of the Regulatory and Operating Agreement between the HA and the owner entity and so long as the owner entity shall not be in default of its obligations thereunder, HUD agrees that in the event of a substantial default by the HA under the ACC, HUD shall exercise any remedies or sanctions authorized under the ACC, including taking possession of the HA's interest in the Project, in such manner as not to disturb the owner entity's rights under the Regulatory and Operating Agreement.

(D) The rights of the mortgagee under the Note and First Mortgage (including the right to exercise all remedies specified therein) shall not be subordinate to any other obligations imposed upon the Development, except as such obligations (i) shall be reflected in a declaration of restrictive covenants as required by Section 9 of this Mixed-Finance ACC Amendment, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (ii) shall be the subject of a subordination agreement with such mortgagee.

In consideration of the foregoing covenants, the parties do hereby set forth their seals:

(SEAL)

HOUSING AUTHORITY

ATTEST:

By _____

Executive Director

Development UNITED STATES OF AMERICA
Secretary of Housing and Urban

By _____

Director of Public Housing
State Office

EXHIBIT A

[Exhibit A must include an identification and description of each participating party (including its role under the Proposal, the type of entity, its composition, and any relationships among parties) involved in the implementation of the full Proposal, with an address and a contact person for each such party. If the Proposal is being implemented in phases, list in Exhibit A-1 (through the applicable number of phases) the participating parties for each of the respective phases. If the identities of all participating parties are not known at the time this Mixed-Finance ACC Amendment is executed, this Mixed-Finance ACC Amendment shall be further amended to include the name, address and contact person for each such participating party.]

EXHIBIT A - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT B

[Exhibit B must include a description of the overall activities to be carried out under the Proposal, in addition to the activities ascribed to, and the financing to be provided by, each participating party. If the Proposal is to be implemented in phases, also describe the activities and financing by phase in Exhibits B - 1 through the applicable number of phases. This Exhibit must be amended if any of the foregoing information (for any phase subsequent to the first phase) is unavailable at the time this Mixed-Finance ACC Amendment is executed.]

Overall Description

EXHIBIT B - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT C

[Exhibit C must include an identification of the total number of public housing units to be developed under the Proposal, with a breakdown by bedroom count.]

I. Proposed number of public housing units _____.

II. Breakdown of public housing units by bedroom count: _____

[If the Proposal is to be implemented in phases, provide the above information for each phase on Exhibits C - 1 through the applicable number of phases. If the number of public housing units, or the breakdown by bedroom count, in any particular phase subsequent to the first phase is unavailable at the time this Mixed-Finance ACC Amendment is executed, such information must be included by amendment to this Exhibit.]

EXHIBIT C - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT D

DEVELOPMENT SCHEDULE

I

I. The evidentiary materials described in Exhibit E of this Mixed-Finance ACC Amendment must be submitted to HUD by the HA no later than:

[SPECIFY THE DATE BY WHICH ALL EVIDENTIARY MATERIALS MUST BE SUBMITTED OR, IF THE PROPOSAL IS TO BE IMPLEMENTED IN PHASES, FOR PHASE 1.]

II. If the Proposal is to be implemented in phases, for each phase (subsequent to the first phase) the Proposal submission package and the evidentiary materials, as described in Exhibit E, must be delivered to HUD no later than the following dates:

	<u>Date for Proposal Submission Package</u>	<u>Date for Evidentiary Materials</u>
Phase 2		[six months after submission package date]
Phase 3		[six months after submission package date]

III. Upon HUD's notification to the HA of its approval of the evidentiary materials required to be submitted under paragraph (I) of this exhibit, the HA shall be authorized to draw down public housing development funds (or HOPE VI funds, if applicable) for the implementation of the Proposal, or the applicable phase of the Proposal, in accordance with all applicable requirements, including Section 7 of this Mixed-Finance ACC Amendment.

IV. The activities described in the HA's Proposal at Exhibit B of this Mixed-Finance ACC Amendment shall be commenced and completed in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
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[If the Proposal is to be implemented in phases, provide the above information for each phase in Exhibits D - 1 through the applicable number of phases. If the commencement and completion dates for any particular phase, subsequent to the first phase, are unavailable at the time this Mixed-Finance ACC Amendment is executed, such information must be included in the Proposal submission package and included in this Exhibit by amendment.]

EXHIBIT D - 1

PHASE 1

The activities described in the HA's Proposal at Exhibit B of this Mixed-Finance ACC Amendment shall be commenced and completed for Phase 1 in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
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[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT E

REQUIRED EVIDENTIARY MATERIALS

The evidentiary materials to be submitted by the HA to HUD must be in one complete package or binder(s) (or, if applicable, in one complete package or binder for each phase), together with a copy of this Mixed-Finance ACC Amendment and the HOPE VI Grant Agreement, if applicable, with an index describing the material submitted, under tabbed dividers. **All evidentiary materials must be submitted in accordance with the provisions of Section 6 of this Mixed-Finance ACC Amendment** and for each phase (if applicable) must consist of the following:

I. _____ All government approvals and permits necessary for the commencement of the activities in the Proposal have been obtained or provided. Evidence of this requirement may be a written original certification from the HA.

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

II. _____ Evidence that title to all land necessary to the implementation of the Proposal is held by the HA, the owner entity, or the appropriate participating party.

III. _____ All agreements required or permitted to be entered into between the HA, the owner entity, partner or participating parties under this Mixed-Finance ACC Amendment.

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____
- H. _____

IV. _____ Evidence of loans, notes, mortgages, deeds of trust, use restrictions, closings, bond sales, or other financing arrangements, whether private or public financing, necessary to the accomplishment of the Proposal (unless any such documents are specifically excluded from the evidentiary materials that must be submitted):

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

V. _____ Legally binding commitments, agreements, and all other documents as required to satisfy the requirements of this Mixed-Finance ACC Amendment, to be submitted to HUD for approval, must include (but is not limited to) the following for each phase, as applicable:

[Following is a sample listing of documents that may be required for each Mixed-Finance ACC Amendment]:

A. _____ Copy of a deed restriction, covenant running with the land, ground lease, or other arrangement, of public record, that will assure to the satisfaction of HUD that the public housing units will be subject to a covenant obligating the owner entity and the HA, and any successors in title (including any successor who acquires title to the owner entity's or HA's estate through foreclosure) to: (1) maintain and operate the public housing units for the period required by law in compliance with all applicable public housing requirements, including the ACC between the HA and HUD, and this Mixed-Finance ACC Amendment; and (2) not to encumber, demolish or sell the public housing units without HUD approval.

B. _____ A regulatory and operating agreement that provides, among other things, for: (a) a methodology acceptable to HUD for distribution of a portion of the HA's operating subsidy to the public housing units; and
(b) binding assurances that the percentage of public housing units and number of bedrooms will be maintained, together with an Authority Reserve Escrow Agreement executed by the HA, the owner entity, and a financial institution acting as escrow agent thereunder.

C. _____ A cooperation agreement executed by and between the HA and the applicable local jurisdiction. If the cooperation agreement does not specifically cover the proposed mixed-finance units, the HA must also submit an opinion from counsel for the applicable locality affirming that the proposed mixed-finance units are covered under the existing cooperation agreement between the locality and the HA.

D. _____ A guarantee of completion from _____ to the HA.

E. _____ A partnership agreement and/or a development agreement executed by and between the HA, the partner, and the owner entity that establishes the relationships among the parties with respect to carrying out the Proposal, including all rights and liabilities (financial and otherwise) of the parties and the respective commitments of the parties with respect to carrying out the Proposal.

F. _____ A management plan for the proposed development, and a management agreement executed by the owner entity and the management agent.

G. _____ A loan agreement providing for the loan of public housing development funds (or HOPE VI funds, if applicable) to the owner entity, in accordance with the Proposal.

H. _____ A copy of the limited partnership agreement of the owner entity, executed by the equity investor(s); a copy of the offering statement or syndication prospectus; a statement by the depository of the funds certifying that the limited partnership interests have been sold and as to the amount of such proceeds that are available for implementation of the Proposal; and an opinion of the owner entity's counsel, addressed to HUD.

I. Alternative management plan. An alternative management plan between the HA and the owner entity concerning the proposed method of dealing with a reduction in operating subsidy for the public housing units in the event of cutbacks in appropriated operating funds, or because of other changes in applicable law.

J. _____ [The loan documents required under item (IV) of this Exhibit F may specifically exclude the following documents:

1. [Loan documents approved by the Federal Housing Commissioner;]

2. _____

3. _____

4. _____

K. _____ A copy of the review and approval form executed by the appropriate official conducting the subsidy layering review pursuant to section 102 of the HUD Reform Act of 1989.

L. _____ Copies of all executed development-related contracts.

M. The HA shall also submit to HUD for review and approval the following evidentiaries:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

EXHIBIT E - 1

PHASE 1

[Evidentiary materials that relate specifically to Phase 1 include the following:]

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT F

This Exhibit is the revised budget for the entire Proposal, including all public and private sources of funds, as applied to the uses (by category), as approved by HUD.

EXHIBIT F - 1

PHASE 1

This Exhibit is the Budget for Phase 1 of the Proposal, including all public and private sources of funds, as applied to the uses (by category), as approved by HUD.

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT G

1. Public housing development funds (or HOPE VI funds, if applicable) needed for the implementation of the Proposal (or, if the Proposal is being implemented in phases, for Phase 1 and any other phase for which no separate ratio is specified on Exhibits G - 2 through the applicable number of phases), may be drawn down under this Mixed-Finance ACC Amendment only in a ratio to other public and private funds in the Proposal of not more than \$1.00 of public housing development funds (or HOPE VI funds, if applicable) to \$_____ of the aggregate amount of other public and private funds provided for in the Proposal, excluding any amounts agreed to by HUD, as provided below. The dollar amount to which this ratio applies is \$_____ (provided, however, that if the Proposal is to be implemented in phases and no other ratio is specified for any phase subsequent to Phase 1, this amount shall be deemed to be increased to the total amount of the Proposal).

2. Set forth below are the amounts and uses of funds that have been excluded, solely for the purposes of establishing the draw down ratio, from the aggregate amount of public and private funds to be provided under the Proposal. The following amounts are not subject to the draw down ratio requirement of Section 7 of this Mixed-Finance ACC Amendment (include amounts for front-end assistance approved by HUD):

<u>AMOUNT</u>	<u>PURPOSE</u>
\$_____	[specify]
\$	TOTAL

[Any separate ratio that is applicable to any other phase of the Proposal must be set forth in the respectively numbered Exhibit, with any exclusions specified as required under item 2 of this Exhibit.]

HUD issuance date: September 1997